

## REPORT

*Of the Committee of Claims in the case of John Chalmers.*

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MARCH 5, 1824.

Read: ordered that it lie upon the table.

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The Committee of Claims to which was referred the petition of John Chalmers,

### REPORT:

That the claim of the petitioner, has heretofore been several times examined by the Committee of Claims, and several unfavorable reports made thereon, to wit: on the 25th of February, 1818, the 4th of January, 1820, and on the 8th of January, 1821. The Committee can perceive no reason for reversing its former decisions; and respectfully refer the House to a report presented on the 25th February, 1818, for a particular statement of the claim, and recommend the adoption of the following resolution.

*Resolved,* That the prayer of the petition ought not to be granted.

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*The Committee of Claims, to whom was referred the petition of John Chalmers, jun. report:*

That the petitioner claims payment from the United States, for a rope-walk, and other property therein contained, also a barn, with rye and oats therein, altogether estimated at \$5,967 38, stated to have been destroyed by fire, during the invasion of the British army of this city, in the month of August, 1814; in support of his claim he states, that he erected this rope-walk, about the year 1803, on the public ground, and near to the public buildings, at Greenleaf's Point, in order to be convenient to supply cordage for the navy; that he oc-

cupied the same when the British army invaded Washington, in the month of August, 1814; that in the month of March of that year, he entered into a written contract with the Secretary of the Navy, to manufacture cordage for the Frigate Java, a copy of which is among the papers accompanying this report. by which it appears, that said Chalmers was to be furnished with hemp at Baltimore by the Navy Agent, for every pound of which he was to deliver a pound of cordage, having for his profit, the increased weight of cordage by the tar put thereon, which is stated to be equal to 25 per cent.; it appears that about thirty ton of hemp has been lost to the United States by this contract; it seems the understanding of the parties *was*, that the United States should take the risk of its destruction by fire; this fact however, does not appear in the contract, and admitting this fact, it sufficiently shews, that the claimant at that time did not expect the United States to be insurers of his rope-walk.

The claimant further alleges, and shews, by the testimony of one witness, who says he was steward in the hospital at Greenleaf's Point, that on the night of the 24th of August, 1814, when the troops under Col. Wadsworth retreated from the Point, they set fire to the public buildings, and that the flames from said buildings communicated fire to a large pile of wood (stored up) between said buildings and the claimant's rope-walk, and from said wood to the south end of said rope-walk, and that thereby a part of said rope-walk was burned; the said witness further states, that on the next day (25th) some of the British troops came down to said point, and set fire to north end of said rope-walk, in which was the hemp and other property of Claimant, thereby the balance of the walk, with the contents, was consumed, except about a half a dozen rod of said rope-walk (in the middle); as also a barn, containing rye and oats.

One other witness states, that on the morning after the capture of Washington, in his endeavors to save private property, he made an attempt to save the rope-walk of John Chalmers, from destruction, when it was observed by them (we suppose he means the enemy) that they would spare nothing that made in favor of our navy, and that from what they said, it appeared they viewed it as public property.

So far as relates to a part of said rope-walk being consumed in consequence of burning the United States' property, your Committee cannot discover a reason why the Government should indemnify the claimant; he made his election, when he placed his rope-walk on the public ground; it *was* for *his* individual emolument, near to public work of *defence*, and public work *shops*; the nature of which was, indicative of their destruction by fire.

As relates to burning the balance of said rope-walk and other property by the enemy, your Committee are unable to discover, why this claim should have a preference to other claims for private property, wantonly and lawlessly destroyed by the enemy, *unless* the profitable contracts which this claimant has had from the Government, should entitle his claim to that preference.

The Committee recommend that the claim be rejected.

*Case of John Chalmers.*

John Chalmers claims payment for a rope-walk and buildings, and certain articles therein contained, in the city of Washington, part whereof having been connected with, and adjoining to public buildings, which were set on fire by order of the officers of the Ordnance Department of the United States, on the invasion of the said city by the British forces, was destroyed in consequence of such fire having communicated thereto; and the residue thereof was destroyed by the enemy, on account of the rope-walk having been used as a place of deposit for naval stores, under the authority of officers or agents of the United States.

The claimant estimates the damage he has sustained at about \$6,200, and in support of his claim he has adduced the following testimony:

1st. An official copy of an agreement dated 29th March, 1814, entered into by the Navy Department with the claimant, whereby it is stipulated that the Navy Agent at Baltimore should deliver to the claimant at that place, from time to time, as it might be required, such quantities of hemp and yarns as should be sufficient to make all the cables, cordage, gun-tackling, bolt-rope, spun yarn, and worming and surplus stores of the same, sufficient for the complete equipment of the United States' frigate *Java* at Baltimore; and that the claimant should manufacture and deliver weight for weight, the whole quantity of cables, cordage, &c. as aforesaid, free from any charge or expense.

2d. The deposition of William Wise and Joseph W. Beck, the former of whom deposes, that he settled with and paid wagoners for the wagonage of hemp belonging to the Navy Department from Baltimore to the claimants' ropewalk at Washington \$30 21, and that the wagonage was estimated at 75 cts. per hundred weight. The said Joseph W. Beck deposes, that he paid for the like services \$68 79, estimated at the same rate; and the said William Wise further deposes, that six hauls of yarns made of the said hemp were sent to Baltimore, weighing 57 hundred weight, and that the residue of the whole of the said hemp was consumed, in hemp and yarns, by the destruction of the claimant's ropewalk on the 25th August, 1814, to the best of his knowledge and belief.

3d. The deposition of Levi P. Cole who saith that, in the month of August, 1814. when the British forces took possession of the City of Washington, he was Steward of the United States' Hospital at Greenleaf's Point—that the hospital was in fair view of and near to the claimant's ropewalk—that, on the night the British entered the said city the troops stationed at the Point, under the command of Col. Wadsworth, set fire to the public buildings and property lying there, which fire communicated to a large quantity of public wood, piled and packed away near to the public storehouse and immediately joining the said ropewalk, by which the walk was set on fire and a considerable part of the South end of it was consumed—that, on the next day the British forces came down and set fire to the North

end of the walk, by which the remainder of it was consumed, except about half a dozen rod—that the end which was consumed by the British contained the hemp and other materials—and that there was a barn belonging to the claimant adjoining the ropewalk, containing oats and rye, which was consumed at the same time and by the same act.

4th. The deposition of Dr. James Ewell who saith that, on the morning after the capture of Washington, he made an attempt to save the ropewalk of the claimant; but it was observed the enemy were determined to spare nothing which made in favour of our Navy, and that from what passed it appeared that the enemy considered the ropewalk in the light of public property.

5th. An estimate, made on oath, by James Middleton and Simon Meade, of the damage sustained by the claimant by the burning of his ropewalk, of which the following is a copy:

74524 bricks laid, hemp house, yarn house and tar house, at \$12	- - - - -	\$894 28
Workmanship and materials for centre	- - - - -	21 60
Digging foundation -	- - - - -	11 40
Cost of a well and pump	- - - - -	60
2496 feet framing, flooring and materials hemp house, yarn house and tar house, 12 do.	- - - - -	299 50
2104 framing, sheeting and shingling and materials for hemp house, yarn house and tar house, 12 do -	- - - - -	252 48
4 door frames and materials, \$7 50	- - - - -	30 00
5 window frames and materials, \$5	- - - - -	25 00
164 verge boards and materials 6 do.; 148 wall slate and do. 6 do.	- - - - -	18 72
9360 roofing to ropewalk covered with shingles, \$12 do.	- - - - -	1123 20
14820 roofing to ropewalk covered with plank, 9 do.	- - - - -	1333 80
9300 posts and planks to sides of walk, 8 do	- - - - -	744 00
31 stake heads and posts, \$1 50 do	- - - - -	46 50
18600 forming and leveling walk	- - - - -	186 00
1680 framing and weather boarding and materials for car- riage house, stable and barn, 8 do.	- - - - -	134 40
2000 framing and flooring and materials for do. 8 do.	- - - - -	160
1300 framing, sheeting, shingling and materials for do. 12 do.	- - - - -	156
Door frame and materials for do.	- - - - -	20
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		\$5,516 88

Cr.

By an hundred dollars received of Col. Bömford of the Ordnance Department	- - - - -	100 00
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\$5,416 88

6th. The deposition of William Wise who saith, that he believes that all the articles stated in an account therein contained, and of which a copy is hereinafter set forth, were burnt in the claimant's ropewalk, with the buildings, on the 25th August, 1814, and that the same were certainly in the said walk a few days before the British came to the said city.

## UNITED STATES,

*To John Chalmers,*

Dr.

## LOSS OF PROPERTY.

1 spinning wheel	-	-	-	-	\$50
1 table do.	-	-	-	-	20
1 back do.	-	-	-	-	35
10 winches (for yarn) at \$1 50 each	-	-	-	-	15
1 pair warping blocks	-	-	-	-	10
To hemp, yarn and cordage	-	-	-	-	150
Twine, weight unknown	-	-	-	-	-
12 to 15 coils of bale rope, about 700 lbs. at 25 cts. per lb.	-	-	-	-	175
3 hatchets at \$15, \$10 and \$5 each	-	-	-	-	30
To machine for spinning thread and twine	-	-	-	-	60
To 2 reels at \$3 and \$2 50	-	-	-	-	5 50
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					\$550 50
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7th. The deposition of the claimant who, after a statement of his claim shewing the amounts of the foregoing accounts saith, that the same is just and true, and that he hath not directly, or indirectly, received any part or parcel, security or other satisfaction for it, except that he sold to Col. Bomford, of the Ordnance Department, the old bricks and other materials about the said ropewalk for \$100.

## SUMMARY OF FACTS.

It appears that claimant entered into a contract with the Department of the Navy on 29th March, 1814, to receive hemp and yarns from the United States in the city of Baltimore, and to manufacture them into cables, ropes and other cordage for the equipment of the frigate Java, and to deliver the same so manufactured at that place—that a quantity of hemp and yarns were delivered to him, and after being manufactured were received by the Government—that some of the hemp and yarns, with some manufactured cordage, remained in his ropewalk on the 25th of August, 1814, when the same was burnt by the British army then in the possession of the city of Washington—that part of the walk had been burned the day before, in consequence of the commandant of the fort at Greenleaf's Point setting fire to and burning the public buildings there, the fire communicating from those buildings to the South end of the ropewalk, and the residue of said walk, as above stated, by the enemy.

It appears from a letter from the Secretary of the Navy to the Chairman of the Committee of Claims, bearing date the 26th October, 1814, that he considered the hemp in the walk at the risk of the United States in case of fire—by which was understood accidental fire; not such a fire as burning by the enemy.

It appears, however, that claimant was relieved, by a special act of Congress, from all demands for the hemp which he had received and was then in his warehouse unmanufactured.

It will depend on Congress to say, whether this raw hemp, deposited in the ropewalk of the claimant by himself but for public purposes, shall be considered by the Government as constituting it a place of deposit for naval stores. It might be implied, from the above letter of the Secretary of the Navy of the 26th October, 1814, to the Chairman of the Committee of Claims, that he so considered it; as the loss of the hemp by an ordinary fire would have been the loss of the United States, and beyond doubt would have been its loss, if the walk had been burned down in consequence of the communication of the fire from the public works at Greenleaf's Point on the 24th August, 1814, and would have been so considered by the Navy Department without the interposition of a special act of Congress. Congress must decide whether the burning by the enemy does not make this a stronger case.

This point being settled favorably to the claimant, his claim seems to be fully established by the most respectable and unquestionable testimony.

1st. The burning of his ropewalk and its contents, in part from the acts of the United States, and in part from the acts of the enemy, who, it appears from the testimony of Dr. Ewell, regarded it in the light of a public establishment for the use of the Navy; which impression is confirmed, in a great degree, by the letter of the superintendent of the city to claimant, dated 16th July, 1803, granting him permission, by order of the President of the United States, to build his walk on public ground, for the purposes intended; which seem to have been understood to be in aid of the navy yard at Washington.

2d. The value of his loss in his buildings, machines, &c. is satisfactorily proved to have been \$5,967 38.

All which is respectfully submitted.

RICHARD BLAND LEE.

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### CLAIM OF JOHN CHALMERS.

The facts established in this case, are these:

On the 16th of July, 1803, the President of the United States authorized Mr. Chalmers to occupy and use, as a ropewalk, a portion of the public reservation of ground in the city of Washington, called the Fort, "subject to resumption by the President, at his pleasure." [Letter of Thomas Munroe, superintendent.]

Mr. Chalmers, accordingly, erected a ropewalk on this ground.

When the rope walk was thus erected, there were no public buildings in its vicinity.

In March, 1814, the Navy Department contracted with Mr. Chalmers, to deliver to him at Baltimore, such quantity of hemp and yarn, as should be sufficient to make all the cables, cordage, &c. of the frigate Java, at Baltimore, he to manufacture and deliver weight for weight, the whole quantity of cables, cordage, &c. free from any charge or expense, deriving his profit from the difference of weight between the hemp and cordage, increased by the tar used in the manufacture.

In August, 1814, when the British forces took possession of the city of Washington, "on the night the British entered the said city, the troops stationed at the point, under the command of Col. Wadsworth, some time in the early part of the night, but, before they left the garrison, set fire to the public buildings and property lying there, which said fire communicated to a large quantity of public wood, piled and packed away near to the public storehouse, and immediately joining the said ropewalk, by which the walk was set on fire, and a considerable part of the south end of it was consumed. On the next day the British forces came down and set fire to the north end of the walk, by which the remainder of it was consumed, except about half a dozen rod. The end which was consumed by the British contained the hemp and other materials. There was a barn belonging to Mr. Chalmers, adjoining the ropewalk, containing oats and rye, which was consumed at the same time, and by the same act." [Deposition of Levi P. Cole, Stewart, of the United States' hospital.] This statement is corroborated by Col. Wadsworth and Wm. Wise, Mr. Chalmers' manager, the former of whom further says, that a considerable quantity of fixed ammunition was in the end of the store house next the ropewalk; that the explosion caused by his orders demolished the building to its foundation; and that the gable end was forced out, and the timbers and rubbish scattered to a considerable distance; and the latter of whom states, that, so late as the morning of the 26th, of August, the cord wood, though in a great measure consumed, was still burning. [Statement of Col. Wadsworth, and deposition of William Wise]

The loss sustained is proved to be, for the buildings destroyed, \$5,416 88, and for materials and machinery \$550 50, making, together, \$5,967 38. [Depositions of James Middleton, Simon Mead, and William Wise.] Under these circumstances Mr. Chalmers applies to Congress for relief.

"It was understood," says the Secretary of the Navy. "that the hemp delivered to him, (Mr. Chalmers) was to be *at the risk of the United States in the event of loss by fire*; but no engagement or suggestion was ever made in respect to the claim for which Mr. Chalmers has petitioned Congress, nor is it at all provided for by the contract." The Secretary adds: "In the case of Mr. Chalmers the public has lost, by the burning of the said ropewalks, about thirty tons of Russia hemp, being the difference between the quantity of hemp delivered to,

and the quantity of cordage received from him, on account of said contract. Mr. Chalmers has lost his labor, and the value of the tar absorbed in the yarns which he had prepared in the ropewalks, at the time the fire took place. Whatever claim Mr. Chalmers may have upon the equity of Congress, in consequence of the ropewalks being burned by the military order, it appears to me clear that he can have none on this department. *If the hemp had been his own*, and he had contracted to deliver cordage at a stated price, in the usual manner of such contracts, he could have had no claim on the Department until he exhibited the receipts of the navy storekeeper, for the quantity of cordage, duly inspected, and received into the public stores." [Official documents.]

Mr. Chalmers has been relieved, by a special act of Congress, from all demands for the hemp received by him, and in his warehouse, in August, 1814.

From these facts it appears that Mr. Chalmers was authorized to use the public ground for a ropewalk, subject only to "resumption by the President at his pleasure;" and that, as there had not been any such resumption in August, 1814, he then stood, in regard to his ropewalk, in the same relation to the United States as if he had been the proprietor of the ground; and, consequently, his claims to indemnity by the United States are precisely the same as if that ground had been private property. Until the grant of the President was revoked, his right to the use of the ground for a ropewalk was as unlimited as if it had been his private property. The simple question, therefore, seems to be, whether, if the ground, as well as the buildings, had absolutely belonged to him, he would not have had a claim to indemnity? The first act of conflagration was by an officer of the United States, by which a public building was set on fire, whose destruction necessarily involved the burning of the ropewalk. Mr. Chalmers states that the arsenal, the building set fire to by our troops, was within ten feet of his ropewalk, which was constructed of wood, and that the public cordwood filled up the intermediate space. Mr. Wise, his manager, states the distance at 20 or 30 yards, and Col. Wadsworth at 30 or 40 yards. In either case, the explosion of the ammunition in the arsenal must have set fire to the cordwood and ropewalk. So far, then, as the ropewalk was destroyed by this act, the claim is perfect on the principle admitted and sanctioned, it is believed, in repeated instances, by the Government. On the ensuing day, nearly the whole of the residue of the ropewalk was destroyed by the enemy. They perceived that the adjacent or neighboring buildings had been just destroyed; that the part of the ropewalk nearest to them had shared the same fate. The inference was natural, and almost irresistible, that the destruction of both had proceeded from the same cause, and that the whole was public property. This, and no other consideration, must have induced them to destroy what remained. Thus their act flowed inevitably from the first burning by the officers of our Government; and, in justice, the same indemnity should be extended for the whole property thus destroyed.

This reasoning is founded on the assumption that the claim to an indemnity rests solely on the circumstance of the property in the ropewalk, as well as its contents, being private property, and the consequent obligation of the Government of the United States to grant an indemnity for the acts of its agents in destroying it. But, so far as regards the contents, the fact would appear to be very questionable. The letter of the Secretary of the Navy, as quoted, seems to admit the hemp to have been public property, else why the admission that the hemp delivered to Chalmers was "to be at the risk of the United States, in the event of loss by fire," in the ordinary way, and the subsequent hypothesis, if the hemp had been his own," thereby admitting that it belonged to the public. This view is corroborated by the act of Congress for the relief of Chalmers, which cannot be considered in any other light than that of a legislative acknowledgment that the hemp, although delivered to Chalmers, still continued the property of the public; as a measure giving effect to a contract to whose completion the executive, from its terms, was incompetent. It cannot, it is presumed, be viewed as an act of grace, Congress not being in the habit of passing such acts, but as an act of justice. Indeed, the very terms of the act direct the accounting officers to settle Chalmers' account "upon such terms as may embrace the justice of his case." If, then, the hemp was public property, the claim to an indemnity for burning the ropewalks is strengthened under a principle sanctioned, it is understood, by the Government making itself answerable for losses incurred by the acts of the enemy committed under such circumstances. To use the language of a committee of the House of Representatives, in the case of William Dewees, "the destruction," by the enemy, "was not a wanton and unauthorized one, but one which, according to the usages of war, was legitimate and proper. It would, therefore, appear that indemnity ought to be afforded." The language of a committee of the Senate, on the same case, is equally strong: "The committee believe the destruction of Col. Dewees' buildings was clearly sanctioned by the usages of civilized warfare; and that the obligation on the Government to make compensation for the loss of property thus taken for public use is unequivocal."

Here, then, are two species of claims. Private property was destroyed by an officer of the Government of the United States. So far as the destruction proceeded immediately and inevitably from this act, the claim may be considered as perfect.

The incidental and consequent burning by the British, presents a further claim, scarcely inferior in obligation, particularly if the fact be admitted, that the property it contained was public property.

*January 25, 1821.*

